

# Exhibit 1

Highly Confidential, Attorneys' Eyes Only

Page 1

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 SAN JOSE DIVISION  
4  
5

6 IN RE IPHONE APPLICATION )  
7 LITIGATION ) No. 5:11-MD-02550-LHK  
8 \_\_\_\_\_)  
9

10 -- HIGHLY CONFIDENTIAL, ATTORNEYS' EYES ONLY --  
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13 DEPOSITION OF JANE HORVATH  
14 Palo Alto, California  
15 Friday, October 4, 2013  
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22

23 Reported by:  
24 LESLIE ROCKWOOD, RPR, CSR 3462  
25 Job No. 66478

1 Friday, October 4, 2013; Palo Alto, California

2 10:02 A.M.

3 --oOo--

4 JANE HORVATH, ESQ.,

5 called as a witness, having been duly sworn,

6 was examined and testified as follows:

7  
8 EXAMINATION

9 BY MR. KAMBER:

10 Q. Good morning. Can you tell me by whom you're  
11 currently employed?

12 A. Apple Inc.

13 Q. And what is your position?

14 A. I am the director of global privacy for Apple  
15 in the legal department.

16 Q. And when did you join Apple?

17 A. In September of 2011.

18 Q. And have you held the same position at Apple  
19 since you joined in September of 2011?

20 A. I have.

21 Q. Have you given a deposition before?

22 A. I have not.

23 Q. And are you an attorney?

24 A. Yes.

25 Q. Prior to joining Apple in September 2011, what

1 Mac App Store. So it's different.

2 Q. Okay.

3 (Interruption in proceedings.)

4 BY MR. KAMBER:

5 Q. You describe a mechanism by which customers  
6 scroll through the terms. Looking in paragraph 3  
7 specifically, you say: "By scrolling through the  
8 agreement and clicking an on-screen button that is  
9 prominently labeled 'agree.'"

10 Do you see that?

11 A. Uh-huh.

12 Q. And my question is: Why do customers -- why  
13 does Apple have customers scroll through the agreement  
14 prior to clicking the on-screen button?

15 A. To show that they have read the agreement.

16 Q. And one cannot click the "agree" button until  
17 it has been scrolled all the way through the document;  
18 is that correct?

19 A. I don't believe so.

20 Q. So in your sentence that says "to create an  
21 iTunes account a user must affirmatively agree to the  
22 App Store terms and conditions" --

23 A. Yes.

24 Q. -- which includes the privacy" -- "Apple  
25 privacy policy by scrolling through the agreement and

1 BY MR. KAMBER:

2 Q. Referring to -- you referenced that you had  
3 reviewed the class certification brief.

4 A. Uh-huh.

5 Q. In the class certification brief, it sets forth  
6 two class definitions that have a start date and an end  
7 date.

8 A. Right.

9 Q. Is it -- when you submitted this declaration --

10 A. Uh-huh.

11 Q. -- is it your -- was it intended that  
12 paragraph 3 applies to all relevant time periods of the  
13 class certification brief?

14 A. Yes.

15 Q. Do you know what percentage of iPhone users  
16 have an iTunes account?

17 A. I do not.

18 Q. Do you have an understanding of a range in  
19 which that is?

20 A. I don't.

21 Q. Directing your attention to paragraph 6. It's  
22 making reference to in July of 2010 --

23 A. Uh-huh.

24 Q. -- you joined Apple in September 2011. How do  
25 you have personal knowledge of the information set forth

1 asking about --

2 MR. KAMBER: 67,000 documents, not pages.

3 MR. JESSEN: Right. It's millions of pages.

4 I'll check. I think that they've been -- I'll  
5 check.

6 MR. KAMBER: I'm just dotting my I's and  
7 crossing my T's.

8 MR. JESSEN: Of course.

9 BY MR. KAMBER:

10 Q. You had attached as Exhibit A was, as you  
11 stated, a true and correct copy of the current privacy  
12 policy?

13 A. Yes.

14 Q. Are you familiar with how that has changed over  
15 the course of the -- over the course of your time at  
16 Apple?

17 A. Yes.

18 Q. What changes have there been?

19 A. We added the cookies section, the link to the  
20 statement about cookies to comply with the European  
21 cookie -- it's known as the Cookie Directive. And then  
22 we recently changed the privacy policy to reflect our  
23 education initiative.

24 We are selling iPads into K through 6 schools.  
25 So we are now permitting through education and through

1 schools under thirteens on the platform. So up until --  
2 prior to this, kids under 13 were not allowed to open an  
3 account.

4 Q. Are those all the changes?

5 A. To my knowledge.

6 Q. And when you're saying "my knowledge," you're  
7 referring to your knowledge as director of global  
8 privacy?

9 A. Yes.

10 Q. In paragraph 8 you state that the privacy  
11 policy is covered solely Apple's internal collection and  
12 use of data. And you quote the first paragraph of the  
13 privacy policy.

14 Now directing your attention to the first  
15 paragraph of the privacy policy, which I would refer you  
16 to -- it's the -- I think it's the first -- it's the  
17 first -- oh, here it is. I've got one that's got the  
18 numbers correct. It's page 9594151.

19 That paragraph was drafted prior to your  
20 joining Apple?

21 A. Yes.

22 Q. Your description of the intent of that  
23 paragraph is based upon your reviewing of that policy in  
24 your professional capacity?

25 A. Yes.

1 privacy is important to Apple so we've developed a  
2 privacy policy that covers how we collect, use,  
3 disclose, transfer and store your information. Please  
4 take a moment to familiarize yourself with our privacy  
5 practices and let us know if you have any questions" on  
6 its face. I haven't changed that language so it's still  
7 true.

8 Q. In the paragraph you state that the privacy  
9 policy has covered solely Apple's internal collection.

10 A. Yes.

11 Q. Is the entire basis of your opinion, as set  
12 forth in paragraph 8, your reading of the plain language  
13 of that paragraph?

14 A. Yes, because on its face, it says it covers how  
15 we collect, use, disclose, transfer and store your  
16 information, and "we" is defined as Apple and Apple  
17 affiliates.

18 Q. So in your opinion to paragraph 8, aside from  
19 your skills as a lawyer -- as a lawyer in reading the  
20 English language, you're not relying upon any  
21 information that you've gained in your position at  
22 Apple?

23 A. No, that's -- I rely on the plain language of  
24 the statement and my skill as a privacy lawyer.

25 Q. Where is "we" defined in the agreement?



1 A. Apple.com is where this is hosted.

2 Q. Uh-huh.

3 A. And let me look at the privacy policy.

4 The first statement is: "Your privacy is  
5 important to Apple." So then we "say so we've developed  
6 a privacy policy." It seems to me in the plain English  
7 reading of that, that "we" is Apple.

8 Q. I just want -- when you said it defined, I  
9 wanted to make sure I wasn't missing a defined term.

10 A. Okay. It just, grammatically, if I'm reading  
11 comprehension, I would say that "we" is Apple.

12 Q. And you stated also, the "we" also includes the  
13 affiliates, Apple affiliates?

14 A. Yes, because it -- if you look down to the  
15 paragraph 2 under "collection and use of personal  
16 information," it says Apple and its affiliates. And  
17 affiliates would be our subs and affiliated companies in  
18 our corporate structure.

19 Q. Is "affiliates" defined anywhere in this  
20 agreement?

21 A. I believe that there was a hyperlink for  
22 affiliates that it was defined, but I'm not sure.  
23 There -- affiliates are what you would generally legally  
24 determine to be an affiliate, which would be our subs  
25 and our -- particularly our global companies. We've

1 incorporated like Apple distribution international,  
2 iTunes SARL. Those are -- would be our affiliates.

3 MR. JESSEN: We've been going, I think, over an  
4 hour. So --

5 MR. KAMBER: The video hasn't had to be changed  
6 yet.

7 THE WITNESS: Could I just go to the restroom.

8 MR. JESSEN: If now is a good time to take a  
9 short break.

10 MR. KAMBER: Give me 30 seconds. We're just  
11 about done, but I'd just like to just finish the  
12 affiliates.

13 BY MR. KAMBER:

14 Q. You mentioned the hyperlink -- the document  
15 that was attached as Exhibit A --

16 A. I'm not sure that there's a hyperlink or not.  
17 I can't remember. If there was, it may have been  
18 Google's privacy policy. I'm sorry.

19 Q. But the privacy policy that is attached is --

20 A. Is the privacy policy that's in effect right  
21 now.

22 Q. And that's -- okay. So I just want to make  
23 sure that you weren't changing anything from your  
24 testimony.

25 A. No. No, I'm not. I'm sorry.

1 Q. With respect to the first sentence on paragraph  
2 10, that Apple's privacy policy does not cover the data  
3 practices of third parties, is there anything you rely  
4 upon outside of the four corners of the privacy policy?

5 A. No, there is actually a statement in the  
6 privacy policy that says that.

7 Q. What is a third party in the context of the  
8 privacy policy?

9 A. It's any entity other than Apple and Apple's  
10 subs and affiliated companies. And affiliated companies  
11 would be defined in our SEC filing as an affiliated  
12 company.

13 Q. Now in the end of paragraph 10, it has the --  
14 it has, hyphen, not Apple's. And that's outside of the  
15 quotes.

16 Do you see that?

17 A. Uh-huh.

18 Q. Is that -- I take it that it's outside of the  
19 quotes that that is not included in the privacy policy  
20 after that sentence --

21 A. Correct.

22 Q. -- that's quoted?

23 A. It's inferred from by the statement in the  
24 quotes.

25 Q. Would the statement be clearer if it had -- if

1           A. They're an agreement between an Apple developer  
2 and Apple. They don't involve customers. They're a  
3 business agreement.

4           Q. And you know that because you've been able --  
5 you've reviewed those documents?

6           A. I have. I'm an Apple developer.

7           Q. Okay. Paragraph 12, does paragraph 12 state  
8 your understanding of the stated provision in the  
9 privacy policy?

10          A. Yes.

11          Q. Is it based upon anything else?

12          A. The language on its face states that.

13          Q. And paragraph 12 sets forth your understanding  
14 of what the language on its face says?

15          A. Yes.

16          Q. Do you believe that that statement or that --  
17 that that statement regarding personal information is  
18 accurate?

19          A. Yes.

20          Q. Is it consistent with -- is it consistent with  
21 the FTC's definition of personal information when the  
22 FTC uses it?

23          A. There is no legally defined mandated definition  
24 by the FTC. In some of its pieces it has said -- stated  
25 that it believes that personal information should

1 include more.

2 Q. In your -- various, I think this is a -- in  
3 2002, Microsoft entered into an agreement with the FTC,  
4 a consent agreement regarding privacy issues. In your  
5 capacity as a privacy professional, have you had an  
6 opportunity to review that agreement?

7 A. I haven't read it in a very long time.

8 MR. KAMBER: Marking as Plaintiffs' Exhibit 78  
9 for indication is a document headed "United States of  
10 America Federal Trade Commission Agreement Containing  
11 Consent Order," and I will point out this is a copy that  
12 I have that is not signed.

13 (Exhibit 78, Agreement Containing Consent  
14 Order, marked for identification.)

15 MR. KAMBER: My understanding based upon where  
16 it was obtained is that it is accurate, but I don't want  
17 to represent -- I'm not trying to represent on the  
18 record or trying to trick the witness into saying that  
19 it's a signed version of the document. It is not. It  
20 is an unsigned version of the document.

21 And I do not have any understanding or belief  
22 that it varies from that. I'm not representing -- but I  
23 haven't seen the signed document.

24 MR. JESSEN: Just out of curiosity, is this a  
25 document that plaintiffs have previously produced?

1 MR. KAMBER: I would -- I will have to check on  
2 that.

3 MR. JESSEN: Okay.

4 MR. KAMBER: It would surprise me because I  
5 think it is a document that was obtained in the last few  
6 days.

7 BY MR. KAMBER:

8 Q. Directing -- I'm not asking -- there's very few  
9 questions out of this so there's no reason to read the  
10 eight-page document, but have you seen this document  
11 before?

12 A. Maybe. Probably.

13 Q. Okay. Directing your attention to page 2 of  
14 the document under "Definitions," under number one where  
15 it says "personally identifiable information or personal  
16 information shall mean"?

17 A. Uh-huh.

18 Q. Do you believe that that paragraph is  
19 substantively different than Apple's definition?

20 A. Yes. But it's binding on Microsoft. It has no  
21 applicability to this case.

22 Q. Does it have a -- does it inform -- is this --  
23 does it reflect, given that it exists in an agreement  
24 containing a consent order, does it reflect what the FTC  
25 and Microsoft agreed that that meant at that point in

1 MR. JESSEN: Can I just object? Just for  
2 clarity of the record, by paragraph 12 you're now going  
3 back to your declaration?

4 MR. KAMBER: I'm not. Yes, good point. Yes,  
5 we are now done with Plaintiffs' Exhibit 78, and we are  
6 back to the Horvath declaration, paragraph 12.

7 THE WITNESS: Their own information in their  
8 address book, yes, as it applies to if it were my  
9 address book and I had my own data in the address book,  
10 and yes, meaning Jane Horvath, my home address and  
11 number.

12 BY MR. KAMBER:

13 Q. But not other people's? If you had other  
14 people's information in your address book, that would  
15 not be personal information?

16 A. That's not your personal information; that's  
17 other people's personal information.

18 Q. Is a photograph personal information under  
19 Apple's definition?

20 A. If you are in the photo.

21 Q. Is somebody's name personal information?

22 A. Yes.

23 Q. Now I see that name is one of the -- is one of  
24 the fields that is identified in the definition. It  
25 includes one of the including but not -- you know,

1 MR. JESSEN: Objection. Lacks foundation --

2 THE WITNESS: It's not my area of expertise.

3 MR. JESSEN: -- ambiguous.

4 BY MR. KAMBER:

5 Q. When you say, "This correctly describes Apple's  
6 internal practices, which are to treat non-personal  
7 information such as a UDID as personal information if it  
8 is combined with other information," upon what do you  
9 rely in making that statement?

10 MR. JESSEN: Just objection to the extent you  
11 misstated what was in the sentence. I don't think you  
12 did so purposefully, but you didn't read it exactly  
13 right.

14 BY MR. KAMBER:

15 Q. Look at the last sentence in paragraph 13?

16 A. Yes.

17 Q. Upon what information did you rely in making  
18 that statement?

19 A. It wouldn't be the collection; it would be our  
20 internal use of that data.

21 Q. But upon what did you rely -- upon what did  
22 you --

23 A. My own internal knowledge.

24 Q. What Apple -- for what Apple databases is the  
25 UDID used?



1 opt-in consent basis. And you can go into your device  
2 and actually display what data is being sent to Apple,  
3 and you can see the -- and associated with the Crash  
4 Reporter key.

5 And we review those data collections very  
6 strenuously.

7 Q. Can any iPhone user upgrade to iOS 7  
8 successfully?

9 A. I believe there are certain older devices that  
10 are not upgradeable.

11 Q. Are there any issues with upgrading to iOS 7  
12 based upon availability of space on the device or a  
13 number of applications that have been installed or prior  
14 application installations?

15 A. I believe you have to have space on your device  
16 to upgrade.

17 Q. Now going back to your declaration.

18 A. Uh-huh.

19 Q. To paragraph 14.

20 A. Oh, here it is. Sorry.

21 Q. Did you rely upon any information outside of  
22 the four corners of the privacy policy or your own  
23 professional knowledge in setting forth the statements  
24 in paragraph 14?

25 A. No, and I -- no. And I wanted to clarify this

1 statement. In my -- in the drafting, it -- this  
2 statement purely applies to Apple Online Services where  
3 purchases are occurring and creating an account. But  
4 it's --

5 Q. Did Apple draft its privacy policy?

6 A. I don't have knowledge. I don't know.

7 Q. I mean, did Apple -- or I mean, was it  
8 something that was -- that Apple drafted and put out  
9 there as its privacy policy?

10 A. Are you asking if an outside counsel drafted it  
11 or whether Apple did?

12 Q. No, no, no, whether Apple as an entity -- I  
13 assume it's drafted by Apple, not by users.

14 A. Oh, oh, you mean whether they put it out there  
15 and let users comment on it? I don't know what happened  
16 when it was drafted. I wasn't at Apple.

17 Q. Okay. No, it was actually just a question of  
18 who was the author of the privacy -- who, as an entity,  
19 what entity authored the privacy policy?

20 A. I would say it was Apple Inc.

21 MR. KAMBER: Given the time, I'm seeing what I  
22 can skip through here.

23 MR. JESSEN: Sure.

24 BY MR. KAMBER:

25 Q. Paragraph -- paragraph 15, did you rely on

1 A. Yes.

2 Q. Are you aware of whether -- of what it means to  
3 turn location services off?

4 A. Somewhat aware.

5 Q. What do you understand location services off to  
6 mean?

7 A. If you turn location services off, I believe it  
8 means that your location data will not be shared with --  
9 either with -- it won't be -- it won't be collected.

10 Q. By whom?

11 A. By the operating system.

12 Q. And does it have any -- and will it -- will any  
13 information be shared with Apple if location services is  
14 off?

15 A. Not generally.

16 Q. Okay. Are you aware of any instances in which  
17 the location services off did not behave in the way that  
18 you described?

19 A. It was before I was -- I vaguely recall  
20 something --

21 MR. JESSEN: Well, I just object to the extent  
22 her knowledge is based upon privileged information.

23 THE WITNESS: My knowledge is not -- yeah.

24 BY MR. KAMBER:

25 Q. Okay.

1 Q. So the paragraph in the privacy policy, the  
2 section entitled "Protection of Personal Information,"  
3 that your view of the second paragraph is that that only  
4 applies to data transactions from a user to Apple on  
5 those particular web pages?

6 A. Where a user is using Apple Online Services --  
7 and Apple Online Services would include iTunes Store,  
8 Apple Online Store, that's where we would -- because  
9 it's Apple transmitting to our servers. It applies --  
10 the privacy policy applies.

11 Q. And in your view, that's the only type of  
12 transaction that's required to be encrypted pursuant to  
13 that paragraph?

14 A. Yes, where Apple is transmitting to Apple  
15 servers, yes.

16 MR. KAMBER: Okay. Then I will hand it over to  
17 the next deposition. We will end this on the caveats  
18 that we both carved out, and I thank you very much for  
19 your time.

20 THE WITNESS: Thank you. Have a safe trip  
21 back.

22 MR. KAMBER: And you can go and keep your  
23 stomach from growling on your ride home now.

24 MR. JESSEN: Thank you.

25 (Time noted: 2:02 p.m.)

Additional Pages  
Submitted Under Seal